

2019 5997
No.

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **JUN 26 2019**

Subject Considered:

CHUBB INDEMNITY INSURANCE COMPANY
202 Halls Mill Road, Suite B
Whitehouse Station, New Jersey 08889-3435

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 19035 and 19041

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Chubb Indemnity Insurance Company (Chubb Indemnity).

WAIVER

Chubb Indemnity acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Chubb Indemnity waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Chubb Indemnity holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to TEX. INS. CODE §§ 801.051-801.053, and is licensed to write multiple lines of insurance, including workers' compensation/employers' liability.
2. Chubb Indemnity was not selected to be tiered in the 2007, 2009, or 2010 Performance Based Oversight (PBO) assessment. Chubb Indemnity was classified as "average" tier in the 2012, 2014, 2016, and 2018 PBO assessments.

**FAILURE TO TIMELY PAY INCOME BENEFITS BASED ON THE
OPINION OF THE DESIGNATED DOCTOR**

3. On [REDACTED], Chubb Indemnity received a report from a designated doctor (DD).
4. The DD determined that the injured employee's disability from [REDACTED], through the present was direct result of the compensable injury. As return to work and disability were issues in dispute, Chubb Indemnity was required to pay accrued benefits no later than five days after receipt of the report, which was by [REDACTED].

5. Chubb Indemnity issued partial payment of accrued temporary income benefits (TIBs) and attorney's fees on [REDACTED] but did not come into full compliance until [REDACTED] which was 51 days late.

FAILURE TO TIMELY PAY ATTORNEY'S FEES

6. On [REDACTED] Chubb Indemnity issued a check to the injured employee for indemnity benefits. Chubb Indemnity was required to make a payment of attorney's fees on the same date.
7. On [REDACTED] Chubb Indemnity issued an attorney fee payment, 21 days late.

ASSESSMENT OF SANCTION

8. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
9. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e):
- the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
10. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation has

negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements.

11. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act (Chubb immediately paid TIBs as soon as the error was discovered); and other matters that justice may require, including but not limited to: the promptness and earnestness of actions to prevent future violations (Chubb has initiated new training and an attorney fee tracking system).
12. Chubb Indemnity acknowledges that DWC and Chubb Indemnity have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
13. Chubb Indemnity acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:


1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, and 414.002.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 408.0041(f) and 28 TEX. ADMIN. CODE § 127.10(h), insurance carriers are required to pay accrued income benefits in accordance with the DD report within five days of receiving the report, during the pendency of any dispute.
7. Chubb Indemnity violated TEX. LAB. CODE §§ 408.0041(f), 415.002(a)(20), 415.002(a)(22), and 28 TEX. ADMIN. CODE § 127.10(h) when it failed to timely pay accrued income benefits in accordance with the DD's report.

8. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), the insurance carrier must begin payment out of approved income benefits by mailing a check to the attorney within seven days of receiving the DWC order and thereafter whenever income benefits are paid.
9. Chubb Indemnity violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE § 152.1(c) when it failed to pay attorney's fees on the same date as income benefits were paid.

ORDER

Chubb Indemnity Insurance Company is ORDERED to pay an administrative penalty of \$ 9,500 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

2019 5997

AFFIDAVIT

STATE OF Delaware §
§
COUNTY OF New Castle §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Christopher Sitowski. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of VP, Claims, and am the authorized representative of Chubb Indemnity Insurance Company. I am duly authorized by said organization to execute this statement.

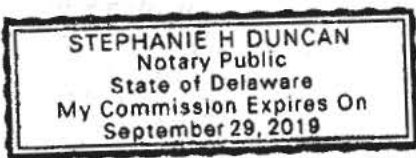
Chubb Indemnity Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Chubb Indemnity Insurance Company is voluntarily entering into this consent order. Chubb Indemnity Insurance Company consents to the issuance and service of this consent order."

X Chris Sitowski
Affiant

SWORN TO AND SUBSCRIBED before me on May 31st, 2019.

(NOTARY SEAL)



Stephanie H Duncan
Signature of Notary Public

Stephanie H Duncan
Printed Name of Notary Public

09/29/2019
Commission Expiration Date

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